



Backgrounder: The Patriot Act

Legislative Background | Dr. Benishek's View | What Others Are Saying About The Patriot Act | House Vote
Section 215 Business Records | Section 206 Roving Wiretaps | Lone Wolf Definition

Legislative Background:

The PATRIOT Act was signed into law by President George W. Bush on October 26, 2001—45 days after the 9/11 terrorist attacks. The Act reduced restrictions on law enforcement agencies' ability to search telephone, email communications, medical, financial, and other records; eased restrictions on foreign intelligence gathering within the United States; and broadened the discretion of law enforcement and immigration authorities in detaining and deporting immigrants suspected of terrorism-related acts.

14 of its 16 original provisions were made permanent by the USA Patriot and Terrorism Prevention Reauthorization Act of 2005. However, provisions on "roving wiretaps," access to business documents, and the "lone wolf" measure of the Intelligence Reform of Terrorism Prevention Act of 2004 intelligence law were sunset requiring Congress to revisit and authorize the 3 provisions.

On May 26, 2011 the House passed S. 990 by a vote of 250-153 with Dr. Benishek's support. The Senate Amendment to S.990 extended by four years the Foreign Intelligence Service Act (FISA) roving wiretaps provision (Section 206), and FISA business records provision of the PATRIOT Improvement and Reauthorization Act of 2005; and the "lone-wolf" provision (Section 6001(a)) of the Intelligence Reform and Terrorism Prevention Act.

Dr. Benishek's View:

"I believe extending these three provisions is necessary for counterterrorism and law enforcement to successfully identify and prevent future attacks against the United States. These provisions of the PATRIOT Act modernize intelligence and legal authorities, ensuring that terrorism investigators have the same tools as those available in criminal investigations.

As with all laws that have the potential to infringe upon American citizens' civil liberties, Congress must continue to press for ongoing oversight and/or judicial review of these provisions. While a number of judicious improvements to the PATRIOT Act have already been made, I do not believe these emergency powers should be made permanent until they are further tailored to ensure that the tools employed to investigate and apprehend terrorists are consistent with our constitutional tradition of respect for the privacy and civil liberties of innocent Americans.

.....
“After careful and thorough study, I voted to extend three expiring provisions in the PATRIOT Act. The three provisions are not a reauthorization of the entire PATRIOT Act, but changes in investigative protocol that require a court order and have built in constitutional safeguards.”

– Dr. Dan Benishek
.....

In my judgment, the provisions that have been extended—court-approved roving wiretaps, access to business and other records relevant to a terrorism investigation, and the monitoring of individuals who engage in terrorist activities outside of a terrorist organization—are constitutional and in most cases have more procedural safeguards in place than similar criminal investigative tools.”

What Others Are Saying About The Patriot Act:

U.S. Congressman Mike Rogers (R-MI), Chairman of the House Permanent Select Committee on Intelligence (HPSCI):

"It is our duty to examine the provisions in a full, aggressive and thoughtful process instead of just rushing through a long term extension," said Chairman Rogers. "These authorities came about because our laws had failed to keep pace with the evolving terrorist threat, which is even more complex today. The enemy is adapting and our laws were relatively antiquated before these revisions were made."

The Heritage Foundation:

“With at least 36 known plots foiled since 9/11, the United States continues to face a serious threat of terrorism. As such, national security investigators continue to need these authorities to track down terror leads and dismantle plots before the public is in any danger. These three amendments—which have been extensively modified over the years by Congress and now include significant new safeguards, including substantial court oversight—are vital to this success. Congress should not let the sunset provisions expire and should instead seek permanent authorization.”

Michele Bachmann, Member of the House Committee on Intelligence:

"We have a new war, a new enemy, new tactics. The lone wolf is one actor acting alone, and we get a tip, and maybe at the last minute we've gotta go in for national security reasons and find that actor. That is an appropriate use of gaining this intelligence and information. Intelligence authorities need the flexibility to tap various phones that suspects might be using. So we have to have the ability to be able to go to whichever phone a potential, alleged terrorist may be using. I would never support a provision that allows unchecked access to personal records, and I spent all week talking to experts on this issue before voting for it. I think

government is too big. I think we intervene too much in people's lives. I certainly don't want to give the government the unfettered right to go on in and access my personal private records."

House Vote:

The House of Representatives passed S. 990 on May 26, 2011 by a vote of 250 to 153, with 28 members not voting. In the Michigan Delegation, 7 of 10 members voted to support S.990 (Rep. Dingell and Rep. Conyers did not vote).

Section 215 Business Records:

- Business Records can ONLY be obtained under Section 215 by an order issued by a federal judge of the FISA Court; a more strict standard than grand jury subpoenas used in criminal investigations.
- Section 215 does NOT authorize the warrantless search of a target's home or other place and a 215 application to seek this authority would be summarily rejected by the FISA Court.
- The FISA Court is comprised of federal trial judges who are experienced in criminal procedure and constitutional protections and who, in addition to their district court duties, also serve on the FISC.
- The approval of FBI Director, Deputy Director, or the head of the FBI's National Security Division is needed for: firearms sales records, library circulation records, library patron lists, book sales records, book customer lists, tax return records, educational records, or medical records containing information that would identify a person.

Section 206 Roving Wiretaps:

- Allows investigator's to monitor and target regardless of what phone a person uses. With today's disposable cell phones, agents must run back to a FISA judge every time a suspect changes phones, risking losing track of the target.
- A FISA Court judge is the only one who can authorize a roving wiretap, and wiretaps are continuously supervised by judges.
- The government must notify the FISA judge when they begin tracking a new phone or computer, and the government must "minimize" roving wiretaps. This requires the government to turn the wiretap off when conversations not related to the investigation are taking place or a person who is not a target of the investigation is using the phone or computer.

Lone Wolf Definition:

- Terrorists not affiliated with a known terrorist organization are “lone wolves.” An increasing number of attempted terrorist attacks on the U.S. are being carried out by self-radicalized jihadists who adopt an agenda as equally hateful and destructive as a terrorist group.
- Prior to 9/11, there was no law allowing for the government to gather intelligence on lone wolves.
- Lone wolf authority CANNOT be used against a U.S. citizen or legal permanent resident.